

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF OHIO

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EDGAR GONZALEZ,

Petitioner,

v.

TERRY A. TIBBALS, WARDEN,

Respondent.  
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CASE NO. 1:13-CV-00014

OPINION & ORDER  
[Resolving Doc. Nos. [1](#) & [5](#)]

JAMES S. GWIN, UNITED STATES DISTRICT JUDGE:

On January 3, 2013, Petitioner Gonzalez filed a petition for writ of habeas corpus under 28 U.S.C. § 2254 seeking relief for alleged constitutional violations that occurred during his jury trial and sentencing hearing in the Cuyahoga County Court of Common Pleas.<sup>1</sup> Under Local Rule 72.2, the Court referred the petition to Magistrate Judge George J. Limbert for a Report and Recommendation. On July 22, 2013, Petitioner filed a *pro se* motion to stay the habeas petition in abeyance until he exhausted his state remedies.<sup>2</sup>

On November 27, 2013, Magistrate Judge Limbert recommended that this Court deny Petitioner's *pro se* motion for a stay and abeyance and dismiss with prejudice Petitioner's petition for a writ of habeas corpus.<sup>3</sup> The Court **ADOPTS** the Magistrate Judge's Report and Recommendation, **DENIES** Petitioner's motion for a stay and abeyance, and **DISMISSES WITH PREJUDICE** Petitioner's writ of habeas corpus.

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<sup>1</sup> Doc. [1](#).

<sup>2</sup> Doc. [5](#).

<sup>3</sup> Doc. [7](#).

The Federal Magistrates Act requires a district court to conduct a *de novo* review only of those portions of a Report and Recommendation to which the parties have made an objection.<sup>4</sup> Parties must file any objections to a Report and Recommendation within fourteen days of service.<sup>5</sup> Failure to object within that time waives a party's right to appeal the magistrate judge's recommendation.<sup>6</sup> Absent objection, a district court may adopt the Magistrate Judge's report without review.<sup>7</sup> However, this Court has conducted its own review and agrees with the conclusions of the Magistrate Judge.

Accordingly, the Court **ADOPTS** in whole Magistrate Judge Limbert's Report and Recommendation and incorporates it fully herein by reference. The Court **DENIES** Petitioner's motion for a stay and abeyance, and further **DISMISSES WITH PREJUDICE** Petitioner's writ of habeas corpus. Moreover, the Court certifies, pursuant to [28 U.S.C. § 1915\(a\)\(3\)](#), that an appeal from this decision could not be taken in good faith, and no basis exists upon which to issue a certificate of appealability.<sup>4</sup>

IT IS SO ORDERED.

Dated: January 13, 2014

s/ James S. Gwin  
JAMES S. GWIN  
UNITED STATES DISTRICT JUDGE

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<sup>4</sup>[28 U.S.C. § 636\(b\)\(1\).](#)

<sup>5</sup>[Fed. R. Civ. P. 72\(a\).](#)

<sup>6</sup>[See \*Thomas v. Arn\*, 474 U.S. 140, 145 \(1985\); \*United States v. Walters\*, 638 F.2d 947, 949-50 \(6th Cir. 1981\).](#)

<sup>7</sup>[Thomas](#), 474 U.S. at 149.

<sup>4</sup>[28 U.S.C. § 2253\(c\); Fed. R. App. P. 22\(b\).](#)